

## TENTATIVE MAP

<b>FILE NO.</b>	<b>T20-028</b>
<b>LOCATION OF PROPERTY</b>	<b>West side of South 4th Street between East San Salvador Street and East William Street (459, 465-469, and 475 South 4th Street)</b>
<b>ZONING DISTRICT</b>	<b>CG Commercial General Zone</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Downtown</b>
<b>PURPOSE OF MAP</b>	<b>Vesting Tentative Map to merge four parcels into one parcel for the development of a multifamily residential use on an approximately 0.45-gross acre site in relationship to Special Use Permit SP20-021</b>
<b>TITLE OF MAP</b>	<b>Vesting Tentative Map 459 &amp; 475 S 4<sup>th</sup> Street</b>
<b>DRAWN BY</b>	<b>Civil Engineering Associates 2055 Gateway Place, Suite 550 San Jose, CA 95110</b>
<b>DATE OF MAP</b>	<b>October 9, 2020</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Supplemental Environmental Impact Report (SEIR) to the Downtown Strategy 2040 Final EIR, and addenda thereto</b>
<b>OWNER / APPLICANT ADDRESS</b>	<b>Erik Hayden UC South 4th Street Owner LLC 99 S. Almaden Blvd, Suite 500 San Jose, CA 95113</b>

## FACTS AND FINDINGS

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as following for this proposed project:

1. **Project Description.** A Vesting Tentative Map to merge four lots into one lot for a multifamily residential use on an approximately 0.45-gross acre site in relationship to Special Use Permit File SP20-021.
2. **Site Description and Surrounding Uses.** The subject site is currently developed with 16 dwelling units comprised of two apartment buildings and a single-family residence (approximately 16,883 square feet total). Vehicular access to the project site is currently provided via two driveways along South Fourth Street. Located east across South 4th Street are multifamily residences and a Super Gas and Mart Store. There are single-family and multifamily residences to the south of the site, as well as a Bicycle Express store. To the west of the site are multifamily residences, including the Sobrato House, HomeFirst Youth Center. North of the site are additional single-family and multifamily residences.

3. **General Plan Conformance.** The subject site is designated **Downtown** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan, which allows residential density up to 800 dwelling units per acre (du/ac), intended for buildings between three and thirty stories in height. The Downtown designation is the primary designation for new high-intensity office, retail, service, residential, and entertainment uses in the Downtown area. All development within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership.

*Analysis: The project is for the construction of a 23-story multifamily residential building located within the Downtown area. The proposed 240 units calculates to 533.3 du/ac. This is consistent with the allowed density of the General Plan designation.*

4. **Zoning Regulations.** The subject site is currently located in the CG Commercial General Zone. The CG Zone does not allow residential-only development. However, California legislature passed Assembly Bill 3194 (AB 3194) on August 28, 2018, effective January 1, 2019, which stipulates that a housing project located on a site that is consistent with the policies and objectives of the General Plan cannot be required to rezone, even if the existing zoning of the site is not consistent with the General Plan. Instead, the local agency shall evaluate the project as if it were in the zoning district that is consistent with the General Plan land use designation of the site.

Therefore, as result of AB 3194, this site will be treated as if it were zoned in the **DC Downtown Primary Commercial Zone**, which is the zone most in conformance with the General Plan designation. This zone provides for a range of uses including residential, commercial, and retail.

The subject Tentative Map is consistent with the zoning district in that the subdivision conforms to the Development Standards of the DC Downtown Primary Zoning District. Per Section 20.70.210 of the Zoning Code, the DC Downtown Primary Commercial District, no property line setbacks are required; therefore, the proposed lot boundary will not conflict with any setback requirements for existing buildings and structures on the site. Furthermore, the DC Zoning District does not include minimum lot size requirements; therefore, the proposed lot would not conflict with any such requirement.

5. **Subdivision Regulations.** The tentative map is consistent with the following applicable design requirements of Chapter 19.36 of the Municipal Code:
- Lot area and width: Section 19.36.170 requires a minimum lot area of 6,000 square feet, and a minimum lot width of 55 feet. The proposed lot is 19,593 square feet in area and is 142 feet wide, in compliance with this section.
  - Lot depth: Section 19.36.220 requires a minimum lot depth of 100 feet. The proposed lot is 138 feet deep, in compliance with this section.
6. **City Council Policy Consistency.** Under City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals, the project is considered to be a large development. Large development projects are required to provide Early Notification by website, email, postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, the on-site sign has been posted at the site since August 1, 2020 to inform the neighborhood of the project. A joint community and environmental scoping meeting was held to discuss the project on September 17, 2020 via Zoom webinar. Approximately 32 members of the public were in attendance for the meeting. Public Notices of the community meeting and public hearing were distributed to the

owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.

7. **Environmental Review.** The environmental impacts of this project were addressed by the Downtown Strategy 2040 Final Program Environmental Impact Report adopted by City Council Resolution No. 78942 on December 18, 2018. The proposed project is eligible for an addendum pursuant to CEQA Guidelines §15164, which states that, “A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR have occurred.”

*Analysis: An Initial Study and Supplemental Environmental Impact Report (SEIR) (State Clearinghouse Number 2020080532) to the Downtown Strategy 2040 Final EIR was prepared by the Director of Planning, Building and Code Enforcement for The Mark Residential Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The SEIR circulated for public review and comment from April 20, 2021 to June 14, 2021 with an extension that ended on July 7, 2021, for a total of 74 days. The SEIR concluded that the project would not result in significant unavoidable impacts or impacts that were not already evaluated and addressed in the Downtown Strategy 2040 Final Program Environmental Impact Report adopted by City Council Resolution No. 78942 on December 18, 2018.*

*The project involves the demolition of existing structures and the construction of 240 residential units in a 23-story building on a 0.45-gross acre site. The project would not have significant environmental effects as further evaluated in the Environmental Impact Report and Initial Study conducted for the project. Consistent with the Downtown Strategy 2040 FEIR, the project will implement all applicable conditions and mitigation measures such as adhering to a construction operation plan, surveying nesting birds, conducting additional soil sampling prior to grading, having an on-site archaeological and tribal monitor and preparing a construction noise and vibration plan. Additionally, the project conditions of approval include adhering to standard building and grading permit conditions as well as standard permit conditions for air quality, biological resources, cultural resources, geology and soils, noise, and water quality during the construction phase.*

*The scale and scope of the project is within the development capacity analyzed in the Downtown Strategy 2040 FEIR. No new or more significant environmental impacts beyond those identified in the Downtown Strategy 2040 FEIR have been identified, nor have any new mitigation measures or alternatives which are considerably different from those analyzed in the EIR been identified. The project will not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the Downtown Strategy EIR.*

#### CEQA Alternatives

*As required under CEQA, the EIR identified and evaluated alternatives to the project. Three critical factors are considered in the selection and evaluation of the alternatives included: (1) the significant impacts from the project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. The environmental analysis considered three project alternatives as briefly outlined below, and further analyzed in the SEIR.*

*1) Location Alternative: This alternative was not considered further because of the lack of available land to support the proposed project within the downtown area that would avoid similar construction impacts as the proposed project.*

2) *No Project – No Development Alternative:* This alternative would retain the existing apartment buildings and the single-family residence as is. However, this alternative would not meet any of the project objectives.

3) *Reduced Development Alternative:* This alternative would reduce the height of the building from 23 stories to six stories. Under this alternative, the project would include one level of below-grade and two levels of above-grade parking are proposed. The remaining floors (floors three to six) would consist of 44 dwelling units, a reduction of 196 units when compared to the proposed project. It is reasonable to assume that the reduced building height would comply with more elements of the 2004 Historic Guidelines and 2019 Downtown Design guidelines and Standards and would not impact the integrity of the adjacent historic resources as much as the proposed project. All other impacts would be the same as the proposed project with all identified mitigation measures and standard permit conditions. However, this alternative would not meet project objectives 1, 3, 4, and 5.

The environmentally superior alternative is the No Project Alternative-No Development Alternative; however, this alternative would not meet any of the project's objectives. The Reduced Development Alternative would be the second-most superior alternative as it would reduce some of the project's construction impacts.

#### Circulation and Public Comments

The Draft SEIR and IS were circulated for public review for 45 days consistent with CEQA Guidelines Section 15132 starting on April 20, 2021 and ending on June 14, 2021. As stated above, the public review and comment period was extended to July 7, 2021 to accommodate additional commenters. Comments were received from regional and local agencies, including the Valley Water District, and Pacific Gas and Electric (PG&E); organizations and businesses, including letters from the Law Foundation of Silicon Valley, Tamien Nation, Kanyon Consulting, and Preservation Action Council of San Jose (PAC SJ); and several individuals within close proximity of the project, including members of the South University Neighborhood (SUN).

Issues and concerns raised in these comment letters include the following:

- a. *Tribal Cultural Resources.* Commenters identified the need to protect tribal cultural resources through on-site monitoring.
- b. *Housing.*
  - i. *Project's conformance with replacement of protected units with on-site affordable housing units per the Housing Crisis Act of 2019*
  - ii. *Relocation assistance and right of first refusal for all displaced tenants*
- c. *Design, Scale and Massing.*
  - i. *Project is out of scale with neighborhood and too tall*
  - ii. *Project is not in complete conformance with Downtown Design Guidelines*
  - iii. *3-story parking garage is not aesthetically appealing and blocks views from nearby residences*
  - iv. *Shade and shadow would be cast onto adjacent residential units because of tall building*



- d. *Parking and Transportation: The project neighborhood area cannot support additional street vehicle parking and the reduced parking requirement and proposed off-site parking arrangement is problematic.*
- e. *Concerns regarding the South University Neighborhood Residential Permit Parking Program*
- f. *Historic. The project is not compatible and is impactful to the surrounding historic neighborhood and historic structures.*
- g. *Notification and Public Outreach. Project noticing and the virtual community meetings were not adequate.*

*Response to Public Comments addressed in First Amendment*

*In accordance with CEQA Guidelines Section 15088, a First Amendment was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft SEIR. As contained within the First Amendment, comments received either did not address the adequacy of the Draft SEIR or the comment did not identify new or more significant impacts, or a new feasible project alternative or mitigation measure considerably different than identified in the Draft EIR. For these reasons, no further CEQA analysis is required and the Draft SEIR taken together with the First Amendment constitutes the Final EIR. The Draft SEIR and First Amendment to the Draft SEIR are available for review on the project page on the City's Active EIRs website at: [www.sanjoseca.gov/ActiveEIRs](http://www.sanjoseca.gov/ActiveEIRs).*

*EIR Recirculation Unnecessary*

*The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not "significant" unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).*

## **FINDINGS**

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. **Subdivision Map Act Findings.** In accordance with Section 66474 of the Government Code of the State of California, the Director of Planning of the City of San José, in consideration of the proposed subdivision shown on the Vesting Tentative Map with the imposed conditions, shall deny approval of a tentative map, if it makes any of the following findings:
  - a. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
  - b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
  - c. That the site is not physically suitable for the type of development.
  - d. That the site is not physically suitable for the proposed density of development.

- e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

*Analysis: Based on review of the proposed subdivision, the Director of Planning of the City of San José does not make any such findings to deny the subject subdivision. The consolidation of the four subject parcels into one parcel is consistent with the General Plan goals, policies and land use designation. The subject site is physically suitable to accommodate multifamily residential use. Furthermore, the project site does not contain any sensitive habitats or wildlife, and the subdivision will not conflict with any easements.*

2. **Subdivision Ordinance Findings.** In accordance with San José Municipal Code (SJMC) Section 19.12.130, the Director may approve the Tentative Map if the Director cannot make any of the findings for denial in Government Code section 66474 and the Director has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the Director may approve the project if the Director does not make any of the findings for denial in San Jose Municipal Code Section 19.12.220.

Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code specified in Findings Section 1 herein.

*Analysis: Based on review of the proposed subdivision, the Director of Planning of the City of San José does not make any such findings to deny the subject subdivision.*

In accordance with the findings set forth above, a Tentative Map to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This Director expressly declares that it would not have granted this permit and determination except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Vesting Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Vesting Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
  - a. Acceptance of the Vesting Tentative Map by the Subdivider; and
  - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** This Vesting Tentative Map shall automatically expire 30 months from and after date of issuance thereof by the Director of Planning, if

within such time period, a Final Map has not been obtained, pursuant to and in accordance with the provisions of this Tentative Map. The date of issuance is the date this Tentative Map is approved by the Director of Planning. However, the Director of Planning may approve a Tentative Map Extension to extend the validity of this Tentative Map in accordance with Title 19. An extension of the approval of the Tentative Map shall exceed two years by the City Council or the Director of Planning. (see 19.16.030).

3. **Development Rights - Vesting on Approval of Vesting Tentative Map.** Per San José Municipal Code Section 19.13.070, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Government Code Section 66474.2. However, if Section 66474.2 of the Government Code is repealed, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.
  - a. Notwithstanding subsection 3.a., above, any permit, including a building permit, approval, extension, or entitlement may be made conditional or denied if any of the following are determined:
    - i. A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
    - ii. The condition or denial is required, in order to comply with state or federal law.
  - b. The rights referred to herein shall expire if a final map is not approved prior to the expiration of the vesting tentative map as provided in Section 19.13.060. If the final map is approved, these rights shall last for the following periods of time:
    - i. An initial time period of one year. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, this one-year initial time period shall begin for each phase when the final map for that phase is recorded. All of said final maps or parcel maps must be recorded within the time period set forth in Section 19.13.060 or the vesting tentative map approval shall expire for those parcels for which final maps or parcel maps are not timely recorded.
    - ii. The initial time period set forth in 3.c.i. shall be automatically extended by any time used for processing a complete application for a grading permit if such processing exceeds thirty days from the date a complete application is filed.
    - iii. A Subdivider may apply to the director for a one-year extension at any time before the initial time period set forth in 3.c.i expires. If the extension is denied, the Subdivider may appeal that denial to the city council within fifteen (15) days.
    - iv. If the Subdivider submits a complete application for a building permit during the periods of time specified in 3.c.i. through 3.c.iii., above, the rights referred to herein shall continue until the expiration of that permit, or any extension of that permit.
4. **Conformance with Other Permits.** The subject Tentative Map conforms to and complies in all respects with the Special Use Permit File SP20-028 on which such Tentative Map is based. Approval of said Tentative Map shall automatically expire with respect to any portion of the lands covered by such Tentative Map on which a Final Map or Tract Map has not yet been recorded if, prior to recordation of a Final Map or Tract Map thereon, the Special Use Permit for such lands automatically expires or for any reason ceases to be operative.

5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
6. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
7. **Improvements.** Pursuant to the Subdivision Agreement (hereinafter referred to as "Agreement"), the Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
8. **Improvement Contract.** In the event the Subdivider has not completed the improvements required for the proposed subdivision at the time the final map is presented for approval, Subdivider shall enter into an improvement contract pursuant to Agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and shall provide the bonds and insurance mentioned therein.
9. **Public Use Easements.** The Subdivider shall dedicate on the final map for public use easements for public utilities, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems and slope easements in and upon all areas within the subdivision shown on the Tentative Map for the subdivision to be devoted to such purposes.
10. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Parcel or Final Map. Such easements so conveyed shall be shown on the Parcel Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded.
11. **Distribution Facilities.** The Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities (up to 40KV), telephone, community cable, and other distribution facilities located on the subject property to be placed underground.
12. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Subdivider shall constitute acknowledgement of receipt of notice by Subdivider that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.



13. **Sewage Fees:** In accordance with City Ordinance, all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
14. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
15. **Conformance to Environmental Conditions of Approval.** This Project shall conform to all applicable requirements of the Downtown Strategy 2040 FEIR Standard Measures, Mitigation Monitoring and Reporting Program (MMRP), and Standard Environmental Permit Conditions approved for this development under the associated Special Use Permit (SP20-021).
16. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Subdivider will be required to have satisfied all of the following Public Works conditions as described in the Special Use Permit (SP20-021).
17. **Revocation.** This Tentative Map is subject to revocation for violation of any of its provisions or conditions.

**APPROVED** and issued on this **28<sup>th</sup> day of July, 2021.**

Chris Burton, Director  
Planning, Building and Code Enforcement

Deputy